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In the United States Patent and Trademark Office

Application Number 10/565,227)
International Application: PCT/GB2004/003257)
Title: Vertical Axis Wind Turbine)
Applicant: Richard Cochrane)
Date of Filing:)
Date of Notice of Abandonment: 30 July 2010 and 02 August 2010)

Petition under 37 C.F.R. 1.182

Applicant, through his attorney, James Michael Faier (USPTO#56731) and Martin Faier (USPTO#22094), Faier & Faier P.C., 566 W. Adams St., Suite 600, Chicago, IL 60661, petition the Director to correct the Transmittal Letter to the United States Designated / Elected Office Concerning a Submission Under 35 U.S.C. 371 (herein "Transmittal Letter") and correct the file so as to separate this case from a second case that are comingled. The Transmittal Letter submitted by Counsel for Mr. Cochrane included a scrivener's error, namely, the International Serial Number was entered as PCT/GB2004/003527 rather than the correct International Serial Number for this case PCT/GB2004/003257. The correct title of invention, Vertical Axis Wind Turbine, and the correct name of inventor, Richard Cochrane, were also on the Transmittal Letter. The correct WIPO publication number and correct International Serial Number were on numerous pages of the Specification. Neither the Office nor counsel for Mr. Cochrane picked up on the error despite a two rounds of filings to assemble parts of the case.

Counsel for applicant provides a Petition Fee of \$400 pursuant to Section 1.17(f). If the fee provided is deficient, then counsel for applicant requests that the deficiency be taken from USPTO deposit account 06-0040.

Counsel for applicant requests that the Office vacate the finding of abandonment in PCT/GB2004/003257 titled Vertical-Axis Wind Turbine since Mr. Cochrane completed his application file before the office sent out a non-germane demand for a DNA sequence. On 01 June 2007, Counsel for Applicant satisfied all outstanding filing requirements by (1) providing the required fees and (2) by providing a declaration signed by the inventor. This submission fulfilled the filing requirements for Mr. Cochrane.

This case went down the path toward abandonment in a manner that was unjust to Mr. Cochrane. On 21 August 2007, the file shows issuance of another Notification of Defective Response issued. This new Notification listed items as submitted such as a "Biochemical Sequence Listing" and "A Request for Immediate Examination" that were not submitted by Mr. Cochrane and would be inapplicable to Mr. Cochrane's wind turbine application. The Notification stated that Mr. Cochrane needed to submit a DNA sequence on disc. Counsel for Applicant's file does not show receipt of this document. Counsel for Applicant maintains a computer docketing software package called Worldmark in which all Office Actions are docketed. When an office action is responded to, the docket notations are removed. Worldmark did not show receipt of the second Notification of Defective Response. It may have arrived but was not docketed in the usual manner because the substance of the office action made no sense because Counsel for Applicant does not practice on biotechnology matters and Mr. Cochrane's case, a wind turbine, had nothing to do with a DNA sequence. Regardless, if the files of PCT/GB2004/003527 and PCT/GB2004/003257 had not been comingled, then the second Notification of Defective Response would not have been issued to Mr. Cochrane. If the second

Notification of Defective Response had not been issued to Mr. Cochrane, then his case would not have been found to be abandoned. Justice would dictate that since Mr. Cochrane's file was complete prior to issue of the 21 August 2007 Notification of Defective Response, that he should not be held responsible for an abandonment of his application.

Finally, there is the matter of duplicate Notices of Abandonment. One notice was issued on 30 July 2010. One notice was issued on 02 August 2010. While Counsel of Applicant believes that both notices should be vacated, certainly at least one notice should be vacated. Regardless, Counsel for Applicant files this response within the time period for response to both notices.

In conclusion, Counsel for Applicant asks that PCT/GB2004/003257 be separated from PCT/GB2004/003527, that the findings of abandonment of this case be vacated, and that Mr. Cochrane's application titled "Vertical Axis Wind Turbine" be sent for examination. If the Office finds that Counsel for Applicant needs to file a Petition to Revive an Application on the grounds of Unintentional Delay under 37 C.F.R. 1.137(b), then Counsel for Applicant asks for time to present that Petition. Counsel for Mr. Cochrane would hope that the Office would not require a Petition to Revive given that Mr. Cochrane fulfilled the Office's filing requirements before the non-germane DNA sequence notification that was issued.

Dated this 2nd day of September 2010.

Respectfully submitted,

/James Michael Faier/

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